IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1246 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARIMAL NARENDRANATH NIHOGI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1246 of 2002

MR SATISH R PATEL for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/02/2002

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed by Commissioner of Police, Surat City, Surat, on the 2nd November, 2001. He seeks to challenge this order by way of this petition under Article 226 of the Constitution.

2. The grounds of detention indicate that the petitioner has been branded as a bootlegger. For coming to this conclusion, the detaining authority took into consideration one offence registered against the detenu. The detaining authority has also relied on statements of two anonymous witnesses and, after verification, has exercised powers under Section 9(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short). The detaining authority after considering the possibility of resorting to less drastic alternative remedies came to a conclusion that it is not possible to resort to less drastic remedies. The petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and are, therefore, required to be detained under the PASA Act.

3. Learned advocate Mr. Patel had drawn attention of this Court to the fact that the petitioner was detained by virtue of an order passed on September 28, 2001. The said order came to be revoked by the State Government on November 2, 2001. On that very day, the impugned order came to be passed and executed by the State Government. Mr. Patel submitted that there is total absence of any new grounds for passing the second order. Relying on the decision of the Apex Court in the case of Chhagan Bhagwan Kahar v. N.L. Kalna, AIR 1989 SC 1234 and Salimkhan H. Pathan v. State of Gujarat, 2000(2) GLH 184, he submitted that for a subsequent order of detention, there must be fresh facts. Mr. Patel, therefore, urged that the petition may be allowed on this ground.

4. The petition has been opposed to by learned Assistant Government Pleader, Mr. Joshi. He submitted that, if the principles laid down by the Apex Court in AIR 1952 SC 350 (Ujgar Singh v. State of Punjab) and AIR 1964 SC 1128 (Godavari v. State of Maharashtra) and this High Court in Shaukat Ali Sabbat Ali v. State of Gujarat & Ors., 1987(1) GLH 518 are considered, the State Government has powers under Section 15(2) of the PASA Act to pass another order of detention on the same grounds. Mr. Joshi, therefore, urged that the petitioner cannot assail the impugned order on this ground and the petition may, therefore, be dismissed.

5. Having regard to rival side contentions, it has to be noted that the decisions relied upon by the learned Advocate for the petitioner are rendered subsequent in point of time. The Apex Court's judgment relied upon by learned Advocate Mr. Patel is of the year 1989. As

against that, the two decisions relied upon by the learned Assistant Government Pleader, Mr. Joshi, are of the year 1952 and 1964, respectively. It would be appropriate to quote what is observed by the Apex Court in Chhagan Bhagwan Kahar v. N.L. Kalna (supra). In paragraph 12, the Apex court observed as under :-

> "12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order."

6. It is thus clear that where an order of detention comes to an end by revocation also (as is the case in the present case), there must be fresh facts for passing such subsequent order. In the instant case, undisputedly, there are no fresh facts or grounds which call for passing of the impugned order of detention.

6.1 This Court had considered this aspect in Salimkhan @ Chhote Jabbar Hanifkhan Pathan (supra) and adopted the same view. Mr. Joshi is not in a position to point out any subsequent decisions of a Larger Bench of this Court or of the Apex Court taking a contrary view.

7. It would also be appropriate to note that in Chhagan Bhagwan Kahar (supra), the Apex Court took into consideration various decisions and then made the observations in paragraph 12, as extracted above. The Apex Court has passed the said order after considering Section 15 of the PASA Act and this Court is, therefore, bound by the said judgment and is not in a position to take a contrary view as suggested by the learned Assistant Government Pleader. The petition, therefore, deserves to be allowed.

8. In the result, the petition is allowed. The

impugned order of detention dated November 2, 2001 passed against the detenu is hereby quashed and set aside. The detenu-Parimal Narendranath Nihogi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute.

9. Direct service is permitted.

[A.L. DAVE, J.]
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